

(viii) If any petition to deny is filed, and the Bureau grants the application, the Bureau will deny the petition(s) and issue a concise statement of the reason(s) for denial, disposing of all substantive issues raised in the petition(s).

(2) *Immediate approval procedures.* Applications that meet the requirements of paragraph (j)(2)(i) of this section qualify for the immediate approval procedures set forth in this paragraph.

(i) To qualify for the immediate approval procedures, the application must be sufficiently complete, contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership), and include payment of the requisite application fee(s), as required for an application processed under the general approval procedures set forth in paragraph (j)(1) of this section, and also must establish, through certifications, that the following additional qualifications are met:

(A) The license does not involve spectrum licensed in a Wireless Radio Service that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if assigned or transferred, create a geographic overlap with spectrum in any licensed Wireless Radio Service (including the same service) in which the proposed assignee or transferee already holds a direct or indirect interest of 10% or more (*see* § 1.2112), either as a licensee or a spectrum lessee, and that could be used by the assignee or transferee to provide interconnected mobile voice and/or data services;

(B) The licensee is not a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules (*see* §§ 1.2110 and 1.2111, and §§ 24.709, 24.714, and 24.839 of this chapter); and,

(C) The assignment or transfer of control does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules, and there is no pending issue as to whether the license is subject to revocation, cancellation, or termination by the Commission.

(ii) Provided that the application establishes that it meets all of the requisite elements to qualify for these immediate approval procedures, consent to the assignment or transfer of control will be reflected in ULS. If the application is filed electronically, consent will be reflected in ULS on the next business day after the filing of the application; if filed manually, consent will be reflected in ULS on the next business day after the necessary data in the manually filed application is entered into ULS. Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application.

(iii) Grant of consent to the application under these immediate approval procedures will be reflected in a public notice (*see* § 1.933(a)) promptly issued after the grant, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

4. Amend § 1.2003 by revising the paragraph entitled "FCC 603," and adding a paragraph entitled "FCC 608," to read as follows:

§ 1.2003 Applications affected.

* * * * *

FCC 603 Wireless Telecommunications Bureau Application for Assignment of Authorization and Transfer of Control;

* * * * *

FCC 608 Notification or Application for Spectrum Leasing Arrangement;

* * * * *

5. Amend § 1.9001(a) to read as follows:

§ 1.9001 Purpose and scope.

(a) The purpose of part 1, subpart X is to implement policies and rules pertaining to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees. This subpart also implements policies for private commons arrangements. These policies and rules also implicate other Commission rule parts, including parts 1, 2, 20, 22, 24, 26, 27, 80, 90, 95, and 101 of title 47, chapter I of the Code of Federal Regulations.

* * * * *

6. Amend § 1.9003 by removing the definition of "FCC Form 603" and replacing it with the definition of "FCC Form 608," revising the definition of "Long-term de facto transfer leasing arrangement," adding the new definition "Private commons," and revising the definitions of "Short-term de facto transfer leasing arrangement" and "Spectrum lessee," to read as follows:

§ 1.9003 Definitions.

* * * * *

FCC Form 608. FCC Form 608 is the form to be used by licensees and spectrum lessees that enter into spectrum leasing arrangements pursuant to the rules set forth in this subpart. Parties are required to submit this form electronically when entering into spectrum leasing arrangements under this subpart, except that licensees falling within the provisions of § 1.913(d) of this part may file the form either electronically or manually.

Long-term de facto transfer leasing arrangement. A long-term *de facto* transfer leasing arrangement is a *de facto* transfer leasing arrangement that has an individual term, or series of combined terms, of more than one year.

Private commons. A "private commons" arrangement is an arrangement, distinct from a spectrum leasing arrangement but permitted in the same services for which spectrum leasing arrangements are allowed, in which a licensee or spectrum lessee makes certain spectrum usage rights under a particular license authorization available to a class of third-party users employing advanced communications technologies that involve peer-to-peer (device-to-device) communications and that do not involve use of the licensee's or spectrum lessee's end-to-end physical network infrastructure (e.g., base stations, mobile stations, or other related elements).

Short-term de facto transfer leasing arrangement. A short-term *de facto* transfer leasing arrangement is a *de facto* transfer leasing arrangement that has an individual or combined term of not longer than one year.

* * * * *

Spectrum lessee. Any third-party entity that leases, pursuant to the spectrum leasing rules set forth in this subpart, certain spectrum usage rights held by a licensee. This term includes reference to third-party entities that lease spectrum usage rights as spectrum sublessees under spectrum subleasing arrangements.

* * * * *

7. Amend § 1.9005 as follows:

- a. Redesignate paragraphs (r) through (dd) as paragraphs (u) through (gg), respectively;
- b. Redesignate paragraph (q) as new paragraph (r);
- c. Add new paragraphs (q), (s), and (t);
- d. Revise newly designated paragraphs (ff) and (gg); and,
- d. Add new paragraph (hh).

§ 1.9005 Included services.

* * * * *

- (q) The Advanced Wireless Services (part 27 of this chapter);

* * * * *

- (s) The Automated Maritime Telecommunications Systems service (Part 80 of this chapter);
- (t) The Public Safety Radio Services (part 90 of this chapter);

* * * * *

- (ff) The Private Operational Fixed Point-to-Point Microwave Service (part 101 of this chapter);
 - (gg) The Common Carrier Fixed Point-to-Point Microwave Service (part 101 of this chapter);
- and,
- (hh) The Multipoint Video Distribution and Data Service (part 101 of this chapter).

* * * * *

8. Amend § 1.9010 by revising the last sentence of paragraph (b)(1)(iii), and by revising paragraph (b)(2)(i), to read as follows:

§ 1.9010 De facto control standard for spectrum leasing arrangements.

* * * * *

- (b) * * *

(1) * * *

(iii) * * * If the spectrum lessee refuses to resolve the interference, remedy the violation, or suspend or terminate operations, either at the direction of the licensee or by order of the Commission, the licensee must use all reasonable legal means necessary to enforce compliance.

(2) * * *

(i) The licensee must file the necessary notification with the Commission, as required under § 1.9020(e).

* * * * *

9. Amend § 1.9020 as follows:

- a. Revise paragraph (a) by adding a new sentence at the end of the paragraph;
- b. Revise paragraphs (d)(2)(i) and (d)(4);
- c. Remove paragraph (d)(6), and redesignate paragraphs (d)(7) through (d)(9) as paragraphs (d)(6) through (d)(8), respectively;
- d. Revise paragraph (e);
- e. Redesignate paragraphs (f) through (l) as paragraphs (g) through (m), respectively;
- f. Add new paragraph (f);
- g. Revise newly designated paragraphs (h)(1), (h)(2), (i), and (j);
- h. Revise the last sentence of newly designated paragraph (l); and,
- i. Revise newly designated paragraph (m).

§ 1.9020 Spectrum manager leasing arrangements.

(a) * * * The term of a spectrum manager leasing arrangement may be no longer than the term of the license authorization.

* * * * *

(d) * * *

(2) * * * (i) The spectrum lessee must meet the same eligibility and qualification requirements that are applicable to the licensee under its license authorization, with the following exceptions. A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Educational Broadband Service (*see* § 27.1201 of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee meets the other eligibility and qualification requirements applicable to Part 27 services (*see* § 27.12 of this chapter). A

spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Public Safety Radio Services (*see* part 90, subpart B and § 90.311(a)(1)(i) of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee is an entity providing communications in support of public safety operations (*see* § 90.523(b) of this chapter).

* * * * *

(4) *Designated entity/entrepreneur rules.* A licensee that holds a license pursuant to small business and/or entrepreneur provisions (*see* § 1.2110 and § 24.709 of this chapter) and continues to be subject to unjust enrichment requirements (*see* § 1.2111 and § 24.714 of this chapter) and/or transfer restrictions (*see* § 24.839 of this chapter) may enter into a spectrum manager leasing arrangement with a spectrum lessee, regardless of whether the spectrum lessee meets the Commission's designated entity eligibility requirements (*see* § 1.2110) or its entrepreneur eligibility requirements to hold certain C and F block licenses in the broadband personal communications services (*see* § 1.2110 and § 24.709 of this chapter), so long as the spectrum manager leasing arrangement does not result in the spectrum lessee's becoming a "controlling interest" or "affiliate" (*see* § 1.2110) of the licensee such that the licensee would lose its eligibility as a designated entity or entrepreneur. To the extent there is any conflict between the revised *de facto* control standard for spectrum leasing arrangements, as set forth in this subpart, and the definition of controlling interest (including its *de facto* control standard) set forth in § 1.2110, the latter definition governs for determining whether the licensee has maintained the requisite degree of ownership and control to allow it to remain eligible for the license or for other benefits such as bidding credits and installment payments.

* * * * *

(e) *Notifications regarding spectrum manager leasing arrangements.* A licensee that seeks to enter into a spectrum manager leasing arrangement must notify the Commission of the arrangement in advance of the spectrum lessee's commencement of operations. The spectrum manager lease notification will be processed pursuant either to the general notification procedures or the immediate processing procedures, as set forth herein. The licensee must submit the notification to the Commission by electronic filing using the Universal Licensing System (ULS) and FCC Form 608, except that a licensee falling within the provisions of § 1.913(d) may file the notification either electronically or manually.

(1) *General notification procedures.* Notifications of spectrum manager leasing arrangements will be processed pursuant the general notification procedures set forth in this paragraph unless they are submitted and qualify for the immediate processing procedures set forth in paragraph (e)(2) of this section.

(i) To be accepted under these general notification procedures, the notification must be sufficiently complete and contain all information and certifications requested on the applicable form, FCC Form 608, including any information and certifications (including those of the spectrum lessee relating to eligibility, basic qualifications, and foreign ownership) required by the rules in this chapter and any rules pertaining to the specific service for which the notification is filed. No application fees are required for the filing of a spectrum manager leasing notification.

(ii) The licensee must submit such notification at least 21 days in advance of commencing operations unless the arrangement is for a term of one year or less, in which case the licensee must provide notification to the Commission at least ten (10) days in advance of operation. If the licensee and spectrum lessee thereafter seek to extend this leasing arrangement for an additional term beyond the

initial term, the licensee must provide the Commission with notification of the new spectrum leasing arrangement at least 21 days in advance of operation under the extended term.

(iii) A notification filed pursuant to these general notification procedures will be placed on an informational public notice on a weekly basis (*see* § 1.933(a)) once accepted, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

(2) *Immediate processing procedures.* Notifications that meet the requirements of paragraph (e)(2)(i) of this section qualify for the immediate processing procedures.

(i) To qualify for these immediate processing procedures, the notification must be sufficiently complete and contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and also must establish, through certifications, that the following additional qualifications are met:

(A) The license does not involve spectrum licensed in a Wireless Radio Service that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if the spectrum leasing arrangement were consummated, create a geographic overlap with spectrum in any licensed Wireless Service (including the same service) in which the proposed spectrum lessee already holds a direct or indirect interest of 10% or more (*see* § 1.2112), either as a licensee or a spectrum lessee, and that could be used by the spectrum lessee to provide interconnected mobile voice and/or data services;

(B) The licensee is not a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules (*see* §§ 1.2110 and 1.2111, and §§ 24.709, 24.714, and 24.839 of this chapter); and,

(C) The spectrum leasing arrangement does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

(ii) Provided that the notification establishes that the proposed spectrum manager leasing arrangement meets all of the requisite elements to qualify for these immediate processing procedures, ULS will reflect that the notification has been accepted. If a qualifying notification is filed electronically, the acceptance will be reflected in ULS on the next business day after filing of the notification; if filed manually, the acceptance will be reflected in ULS on the next business day after the necessary data from the manually filed notification is entered into ULS. Once the notification has been accepted, as reflected in ULS, the spectrum lessee may commence operations under the spectrum leasing arrangement, consistent with the term of the arrangement.

(iii) A notification filed pursuant to these immediate processing procedures will be placed on an informational public notice on a weekly basis (*see* § 1.933(a)) once accepted, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

(f) *Effective date of a spectrum manager leasing arrangement.* The spectrum manager leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section, as of the beginning date of the term as specified in the spectrum leasing notification.

* * * * *

(h) *Expiration, extension, or termination of a spectrum leasing arrangement.* (1) Absent Commission termination or except as provided in paragraph (h)(2) or (h)(3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the spectrum leasing notification.

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing notification provided that the licensee notifies the Commission of the extension in advance of operation under the extended term and does so pursuant to the general notification procedures or immediate processing procedures set forth in this section, whichever is applicable. If the general notification procedures are applicable, the licensee must notify the Commission at least 21 days in advance of operation under the extended term.

* * * * *

(i) *Assignment of a spectrum leasing arrangement.* The spectrum lessee may assign its spectrum leasing arrangement to another entity provided that the licensee has agreed to such an assignment, is in privity with the assignee, and notifies the Commission before the consummation of the assignment, pursuant to the applicable notification procedures set forth in this section. In the case of a non-substantial (*pro forma*) assignment that falls within the class of *pro forma* transactions for which prior Commission approval would not be required under § 1.948(c)(1), the licensee must file notification of the assignment with the Commission, using FCC Form 608 and providing any necessary updates of ownership information, within 30 days of its completion. The Commission will place information related to the assignment, whether substantial or *pro forma*, on public notice.

(j) *Transfer of control of a spectrum lessee.* The licensee must notify the Commission of any transfer of control of a spectrum lessee before the consummation of the transfer of control, pursuant to the applicable notification procedures of this section. In the case of a non-substantial (*pro forma*) transfer of control that falls within the class of *pro forma* transactions for which prior Commission approval would not be required under § 1.948(c)(1), the licensee must file notification of the transfer of control with the Commission, using FCC Form 608 and providing any necessary updates of ownership information, within 30 days of its completion. The Commission will place information related to the transfer of control, whether substantial or *pro forma*, on public notice.

* * * * *

(l) * * * The licensee must submit a notification regarding the spectrum subleasing arrangement in accordance with the applicable notification procedures set forth in this section.

(m) *Renewal.* Although the term of a spectrum manager leasing arrangement may not be longer than the term of a license authorization, a licensee and spectrum lessee that have entered into an arrangement whose term continues to the end of the current term of the license authorization may, contingent on the Commission's grant of the license renewal, renew the spectrum leasing arrangement to extend into the term of the renewed license authorization. The Commission must be notified of the renewal of the spectrum leasing arrangement at the same time that the licensee submits its application for license renewal (*see* § 1.949). The spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the renewal of the license authorization and the extension of the spectrum leasing arrangement into the term of the renewed license authorization.

10. Revise § 1.9030 as follows:

- a. In paragraph (a), revise the last sentence, and add a new sentence following that sentence;
- b. Revise paragraph (d)(2)(i);
- c. Remove paragraph (d)(6), and redesignate paragraphs (d)(7) through (d)(9) as paragraphs (d)(6) through (d)(8), respectively;
- d. Revise newly designated paragraph (d)(8);
- e. Revise paragraph (e);
- f. Redesignate paragraphs (f) through (k) as paragraphs (g) through (l), respectively;
- g. Add new paragraph (f); and,
- h. Revise newly designated paragraphs (g)(1), (g)(2), (h), (i), and (l).

§ 1.9030 Long-term *de facto* transfer leasing arrangements.

(a) * * * A "long-term" *de facto* transfer leasing arrangement has an individual term, or series of combined terms, of more than one year. The term of a long-term *de facto* transfer leasing arrangement may be no longer than the term of the license authorization.

* * * * *

(d) * * *

(2) * * * (i) The spectrum lessee must meet the same eligibility and qualification requirements that are applicable to the licensee under its license authorization. A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Educational Broadband Service (*see* § 27.1201 of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee meets the other eligibility and qualification requirements applicable to Part 27 services (*see* § 27.12 of this chapter). A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Public Safety Radio Services (*see* part 90, subpart B and § 90.311(a)(1)(i) of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee is an entity providing communications in support of public safety operations (*see* § 90.523(b) of this chapter).

* * * * *

(8) *E911 requirements.* To the extent the licensee is required to meet E911 obligations (*see* § 20.18 of this chapter), the spectrum lessee is required to meet those obligations with respect to the spectrum leased under the spectrum leasing arrangement insofar as the spectrum lessee's operations are encompassed within the E911 obligations.

(e) *Applications for long-term *de facto* transfer leasing arrangements.* Applications for long-term *de facto* transfer leasing arrangements will be processed either pursuant to the general approval procedures or the immediate approval procedures, as discussed herein. Spectrum leasing parties must submit the application by electronic filing using ULS and FCC Form 608, and obtain Commission

consent prior to consummating the transfer of *de facto* control of the leased spectrum, except that parties falling within the provisions of § 1.913(d) may file the application either electronically or manually.

(1) *General approval procedures.* Applications for long-term *de facto* transfer leasing arrangements will be processed pursuant to the general approval procedures set forth in this paragraph unless they are submitted and qualify for the immediate approval procedures set forth in paragraph (e)(2) of this section.

(i) To be accepted for filing under these general approval procedures, the application must be sufficiently complete and contain all information and certifications requested on the applicable form, FCC Form 608, including any information and certifications (including those of the spectrum lessee relating to eligibility, basic qualifications, and foreign ownership) required by the rules in this chapter and any rules pertaining to the specific service for which the application is filed. In addition, the spectrum leasing application must include payment of the required application fee(s); for purposes of determining the applicable application fee(s), the application will be treated as a transfer of control (*see* § 1.1102).

(ii) Once accepted for filing, the application will be placed on public notice, except no prior public notice will be required for applications involving authorizations in the Private Wireless Services, as specified in § 1.933(d)(9).

(iii) Petitions to deny filed in accordance with section 309(d) of the Communications Act must comply with the provisions of § 1.939, except that such petitions must be filed no later than 14 days following the date of the public notice listing the application as accepted for filing.

(iv) No later than 21 days following the date of the public notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will affirmatively consent to the application, deny the application, or determine to subject the application to further review. For applications for which no prior public notice is required, the Bureau will affirmatively consent to the application, deny the application, or determine to subject the application to further review no later than 21 days following the date on which the application has been filed and any required application fee has been paid (*see* § 1.1102).

(v) If the Bureau determines to subject the application to further review, it will issue a public notice so indicating. Within 90 days following the date of that public notice, the Bureau will either take action upon the application or provide public notice that an additional 90-day period for review is needed.

(vi) Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application.

(vii) Grant of consent to the application will be reflected in a public notice (*see* § 1.933(a)) promptly issued after the grant, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

(viii) If any petition to deny is filed, and the Bureau grants the application, the Bureau will deny the petition(s) and issue a concise statement of the reason(s) for denial, disposing of all substantive issues raised in the petition(s).

(2) *Immediate approval procedures.* Applications that meet the requirements of paragraph (e)(1)(i) of this section qualify for the immediate approval procedures.

(i) To qualify for the immediate approval procedures, the application must be sufficiently complete, contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership), and include payment of the requisite application fee(s), as required for an application processed under the general approval procedures set forth in paragraph (e)(1)(i) of this section, and also must establish, through certifications, that the following additional qualifications are met:

(A) The license does not involve spectrum licensed in a Wireless Radio Service that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if the spectrum leasing arrangement were consummated, create a geographic overlap with spectrum in any licensed Wireless Service (including the same service) in which the proposed spectrum lessee already holds a direct or indirect interest of 10% or more (*see* § 1.2112), either as a licensee or a spectrum lessee, and that could be used by the spectrum lessee to provide interconnected mobile voice and/or data services;

(B) The licensee is not a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules (*see* §§ 1.2110 and 1.2111, and §§ 24.709, 24.714, and 24.839 of this chapter); and,

(C) The spectrum leasing arrangement does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

(ii) Provided that the application establishes that it meets all of the requisite elements to qualify for these immediate approval procedures, consent to the *de facto* transfer spectrum leasing arrangement will be reflected in ULS. If the application is filed electronically, consent will be reflected in ULS on the next business day after filing of the application; if filed manually, consent will be reflected in ULS on the next business day after the necessary data from the manually filed application is entered into ULS. Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application, as reflected in ULS.

(iii) Grant of consent to the application under these immediate approval procedures will be reflected in a public notice (*see* § 1.933(a)) promptly issued after grant, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

(f) *Effective date of a de facto transfer leasing arrangement.* If the Commission consents to the *de facto* transfer leasing arrangement, the *de facto* transfer leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section, on the date set forth in the application. If the Commission consents to the arrangement after that specified date, the spectrum leasing application will become effective on the date of the Commission affirmative consent.

(g) *Expiration, extension, or termination of spectrum leasing arrangement.* (1) Except as provided in paragraph (g)(2) or (g)(3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the application. * * *

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing application pursuant to the applicable application procedures set forth in § 1.9030(e). Where there is pending before the Commission at the date of termination of the spectrum leasing arrangement a proper and timely application seeking to extend the arrangement, the parties may continue

to operate under the original spectrum leasing arrangement without further action by the Commission until such time as the Commission shall make a final determination with respect to the application.

* * * * *

(h) *Assignment of spectrum leasing arrangement.* The spectrum lessee may assign its lease to another entity provided that the licensee has agreed to such an assignment, there is privity between the licensee and the assignee, and the assignment is approved by the Commission pursuant to the same application and approval procedures set forth in this section. In the case of a non-substantial (*pro forma*) assignment that falls within the class of *pro forma* transactions for which prior Commission approval would not be required under § 1.948(c)(1), the parties involved in the assignment must file notification of the assignment with the Commission, using FCC Form 608 and providing any necessary updates of ownership information, within 30 days of its completion. The Commission will place information related to the assignment, whether substantial or *pro forma*, on public notice.

(i) *Transfer of control of a spectrum lessee.* A spectrum lessee seeking to transfer of control must obtain Commission consent using the same application and Commission consent procedures set forth in this section. In the case of a non-substantial (*pro forma*) transfer of control that falls within the class of *pro forma* transactions for which prior Commission approval would not be required under § 1.948(c)(1), the parties involved in the transfer of control must file notification of the transfer of control with the Commission, using FCC Form 608 and providing any necessary updates of ownership information, within 30 days of its completion. The Commission will place information related to the transfer of control, whether substantial or *pro forma*, on public notice.

* * * * *

(l) *Renewal.* Although the term of a long-term *de facto* transfer spectrum leasing arrangement may not be longer than the term of a license authorization, a licensee and spectrum lessee that have entered into an arrangement whose term continues to the end of the current term of the license authorization may, contingent on the Commission's grant of the license renewal, extend the spectrum leasing arrangement into the term of the renewed license authorization. The Commission must be notified of the renewal of the spectrum leasing arrangement at the same time that the licensee submits its application for license renewal (*see* § 1.949). The spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the renewal of the license authorization and the extension of the spectrum leasing arrangement into the term of the renewed license authorization.

11. Amend § 1.9035 as follows:

- a. In paragraph (a), revise the last sentence, and add a new sentence following that sentence;
- b. Remove paragraph (d)(4) and redesignate paragraph (d)(5) as paragraph (d)(4);
- c. Revise paragraph (e);
- d. Redesignate paragraphs (f) through (m) as paragraphs (g) through (n), respectively;
- e. Add new paragraph (f);
- f. Revise newly designated paragraphs (g)(1), (h)(1), (h)(2), (i)(1), and (i)(2);

- g. Revise newly designated paragraph (j) by replacing the phrase “§ 1.9030(g)” with the phrase “§ 1.9030(h)”;
- h. Revise newly designated paragraph (k) by replacing the phrase “§ 1.9030(h)” with the phrase “§ 1.9030(i)”;
- i. Revise newly designated paragraph (l) by replacing the phrase “§ 1.9030(i)” with the phrase “§ 1.9030(j)”;
- j. Revise newly designated paragraph (n).

§ 1.9035 Short-term *de facto* transfer leasing arrangements.

(a) * * * A “short-term” *de facto* transfer leasing arrangement has an individual or combined term of not longer than one year. The term of a short-term *de facto* transfer leasing arrangement may be no longer than the term of the license authorization.

* * * * *

(e) *Spectrum leasing application.* Short-term *de facto* transfer leasing arrangements will be processed pursuant to immediate approval procedures, as discussed herein. Parties entering into a short-term *de facto* transfer leasing arrangement are required to file an electronic application with the Commission, using FCC Form 608, and obtain Commission consent prior to consummating the transfer of *de facto* control of the leased spectrum, except that parties falling within the provisions of § 1.913(d) may file the application either electronically or manually.

(1) To be accepted for filing under these immediate approval procedures, the application must be sufficiently complete and contain all information and certifications requested on the applicable form, FCC Form 608, including any information and certifications (including those relating to the spectrum lessee relating to eligibility, basic qualifications, and foreign ownership) required by the rules of this chapter and any rules pertaining to the specific service for which the application is required. In addition, the application must include payment of the required application fee; for purposes of determining the applicable application fee, the application will be treated as a transfer of control (*see* § 1.1102). Finally, the spectrum leasing arrangement must not require a waiver of, or declaratory ruling, pertaining to any applicable Commission rules.

(2) Provided that the application establishes that it meets all of the requisite elements to qualify for these immediate approval procedures, consent to the short-term *de facto* transfer spectrum leasing arrangement will be reflected in ULS. If the application is filed electronically, consent will be reflected in ULS on the next business day after filing of the application; if filed manually, consent will be reflected in ULS on the next business day after the necessary data from the manually filed application is entered into ULS. Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application, as reflected in ULS.

(3) Grant of consent to the application under these procedures will be reflected in a public notice (*see* § 1.933(a)) promptly issued after grant, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

(f) *Effective date of spectrum leasing arrangement.* The spectrum leasing arrangement will be deemed effective in the Commission’s records, and for purposes of the application of the rules set forth

in this section, on the date set forth in the application. If the Commission consents to the arrangement after that specified date, the spectrum leasing application will become effective on the date of the Commission affirmative consent.

(g) *Restrictions on the use of short-term de facto transfer leasing arrangements.* (1) The licensee and spectrum lessee are not permitted to use the special rules and expedited procedures applicable to short-term *de facto* transfer leasing arrangements for arrangements that in fact will exceed one year, or that the parties reasonably expect to exceed one year.

* * * * *

(h) *Expiration, extension, or termination of the spectrum leasing arrangement.* (1) Except as provided in paragraph (h)(2) or (h)(3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the short-term *de facto* transfer leasing arrangement. The Commission's approval of the short-term *de facto* transfer leasing application includes consent to return the leased spectrum to the licensee at the end of the term of the spectrum leasing arrangement.

(2) Upon proper application (*see* paragraph (e) of this section), a short-term *de facto* transfer leasing arrangement may be extended beyond the initial term set forth in the application provided that the initial term and extension(s) together would not result in a leasing arrangement that exceeds a total of one year.

* * * * *

(i) *Conversion of a short-term spectrum leasing arrangement into a long-term de facto transfer leasing arrangement.* (1) In the event the licensee and spectrum lessee involved in a short-term *de facto* transfer leasing arrangement seek to extend the spectrum leasing arrangement beyond the one-year limit for short-term *de facto* transfer leasing arrangements, the parties may do so provided that they meet the conditions set forth in paragraphs (i)(2) and (i)(3) of this section.

(2) If a licensee that holds a license that continues to be subject to transfer restrictions and/or requirements relating to unjust enrichment pursuant to the Commission's small business and/or entrepreneur provisions (*see* § 1.2110 of this part and § 24.709 of this chapter) seeks to extend a short-term *de facto* transfer leasing arrangement with its spectrum lessee (or related entities, as determined pursuant to § 1.2110(b)(2)) beyond one year, it may convert its arrangement into a long-term *de facto* transfer spectrum leasing arrangement provided that it complies with the procedures for entering into a long-term *de facto* transfer leasing arrangement and that it pays any unjust enrichment that would have been owed had the licensee filed a long-term *de facto* transfer spectrum leasing application at the time it applied for the initial short-term *de facto* transfer leasing arrangement.

* * * * *

(n) *Renewal.* The rule applicable with regard to long-term *de facto* transfer leasing arrangements (*see* § 1.9030(l)) applies in the same manner to short-term *de facto* transfer leasing arrangements, except that the renewal of the short-term *de facto* transfer leasing arrangement to extend into the term of the renewed license authorization cannot enable the combined terms of the short-term *de facto* transfer leasing arrangements to exceed one year. The Commission must be notified of the renewal

of the spectrum leasing arrangement at the same time that the licensee submits its application for license renewal (*see* § 1.949).

* * * * *

12. Amend § 1.9045 by revising paragraph (b) to read as follows:

§ 1.9045 Requirements for spectrum leasing arrangements entered into by licensees participating in the installment payment program.

* * * * *

(b) If a licensee holds a license subject to the installment payment program rules (*see* § 1.2110 and related service-specific rules), the licensee and any spectrum lessee must execute the Commission-approved financing documents. No licensee or potential spectrum lessee may file a spectrum leasing notification or application without having first executed such Commission-approved financing documentation. In addition, they must certify in the spectrum leasing notification or application that they have both executed such documentation.

* * * * *

13. Add § 1.9048 to read as follows:

§ 1.9048 Special provisions relating to spectrum leasing arrangements involving licensees in the Public Safety Radio Services.

Licensees in the Public Safety Radio Services (*see* part 90, subpart B and § 90.311(a)(1)(i) of this chapter) may enter into spectrum leasing arrangements with other public safety entities eligible for such a license authorization as well as with entities providing communications in support of public safety operations (*see* § 90.523(b) of this chapter).

14. Add § 1.9080 to read as follows:

§ 1.9080 Private commons.

(a) *Overview.* A “private commons” arrangement is an arrangement, distinct from a spectrum leasing arrangement but permitted in the same services for which spectrum leasing arrangements are allowed, in which a licensee or spectrum lessee makes certain spectrum usage rights under a particular license authorization available to a class of third-party users employing advanced communications technologies that involve peer-to-peer (device-to-device) communications and that do not involve use of the licensee’s or spectrum lessee’s end-to-end physical network infrastructure (*e.g.*, base stations, mobile stations, or other related elements). In a private commons arrangement, the licensee or spectrum lessee authorizes users of certain communications devices employing particular technical parameters, as specified by the licensee or spectrum lessee, to operate under the license authorization. A private commons arrangement differs from a spectrum leasing arrangement in that, unlike spectrum leasing arrangements, a private commons arrangement does not involve individually negotiated spectrum access rights with entities that seek to provide network-based services to end-users. A private commons arrangement does not affect unlicensed operations in a particular licensed band to the extent that they are permitted pursuant to Part 15.

(b) *Licensee/spectrum lessee responsibilities.* As the manager of any private commons, the licensee or spectrum lessee:

(1) Establishes the technical and operating terms and conditions of use by users of the private commons, including those relating to the types of communications devices that may be used within the private commons, consistent with the terms and conditions of the underlying license authorization;

(2) Retains *de facto* control of the use of spectrum by users within the private commons, including maintaining reasonable oversight over the users' use of the spectrum in the private commons so as to ensure that the use of the spectrum, and communications equipment employed, comply with all applicable technical and service rules (including requirements relating to radiofrequency radiation) and maintaining the ability to ensure such compliance; and,

(3) Retains direct responsibility for ensuring that the users of the private commons, and the equipment employed, comply with all applicable technical and service rules, including requirements relating to radiofrequency radiation and requirements relating to interference.

(c) *Notification requirements.* Prior to permitting users to commence operations within a private commons, the licensee or spectrum lessee must notify the Commission, using FCC Form 608, that it is establishing a private commons arrangement. This notification must include information that describes: the location(s) or coverage area(s) of the private commons under the license authorization; the term of the arrangement; the general terms and conditions for users that would be gaining spectrum access to the private commons; the technical requirements and equipment that the licensee or spectrum lessee has approved for use within the private commons; and, the types of communications uses that are to be allowed within the private commons.

PART 24 – PERSONAL COMMUNICATIONS SERVICES

15. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

16. Revise § 24.239 by adding the following sentence at the end of the paragraph, to read as follows:

§ 24.239 Cost-sharing requirements for broadband PCS.

*** If a licensee in the Broadband PCS Service enters into a spectrum leasing arrangement (as set forth in part 1, subpart X of this chapter) and the spectrum lessee triggers a cost-sharing obligation, the licensee is the PCS entity responsible for satisfying the cost-sharing obligations under §§ 24.239 through 24.253 of this chapter.

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

17. The authority citation for Part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

18. Amend § 90.20 by adding a new paragraph (h) to read as follows:

(h) *Spectrum leasing arrangements.* Notwithstanding any other provisions of this paragraph to the contrary, licensees in the Public Safety Radio Services (*see* part 90, subpart B of this chapter) may enter into spectrum leasing arrangements (*see* part 1, subpart X of this chapter) with entities providing communications in support of public safety operations.

APPENDIX D – FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice*.² The Commission sought written public comment on the proposals in the *Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Second Report and Order and Order on Reconsideration

2. In the Second Report and Order⁴ and the Order on Reconsideration,⁵ we build on the framework established in the *Report and Order*, in which we adopted policies, rules, and procedures designed to facilitate the ability of many Wireless Radio Services licensees, including many small businesses, to lease spectrum usage rights and to transfer and assign licenses to third parties. In this Second Report and Order, we take additional steps to further reduce regulatory delay so that spectrum leasing parties in our Wireless Radio Services can implement certain classes of spectrum leasing arrangements and can transfer and assign licenses in a more timely fashion, in accordance with evolving marketplace demands and customer needs. In the Order on Reconsideration, we address a variety of issues addressed in the *Report and Order*, including the respective responsibilities of licensees and spectrum lessees regarding particular service rules.

3. As with the underlying *Report and Order*, these actions take us further down the path toward greater reliance on the marketplace, thus expanding the scope of available wireless services and devices and enabling more efficient and dynamic use of spectrum to the ultimate benefit of consumers throughout the country.⁶ The steps taken in the Second Report and Order and in the Order on Reconsideration to facilitate the development of secondary markets in wireless spectrum expand upon and complement several of the Commission's major policy initiatives and public interest objectives. These include our efforts to encourage the development of broadband services for all Americans, promote increased facilities-based competition among service providers, enhance economic opportunities and access for the provision of communications services by designated entities,⁷ and enable development of additional and innovative services in rural areas.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See generally Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (Appendix D) (2003) (*Report and Order and Further Notice*, respectively), *Erratum*, 18 FCC Rcd 24817 (2003).

³ See 5 U.S.C. § 604. We also note that this proceeding is deregulatory in nature, and that some of the issues discussed here could perhaps have been certified under 5 U.S.C. § 605.

⁴ See Second Report and Order, Section IV, *supra*.

⁵ See Order on Reconsideration, Section V, *supra*.

⁶ See generally *Report and Order* at ¶¶ 2, 32-189.

⁷ "Designated entities" include small businesses, rural telephone companies, and businesses owned by members of minority groups and/or women. Through the years, the Commission has implemented policies to help ensure that these entities are given the opportunity to provide spectrum-based services, consistent with Sections (continued....)

4. Second Report and Order. Consistent with the proposals set forth in the *Further Notice*, the Second Report and Order further streamlines our processing of certain classes of spectrum leasing transactions – both *de facto* transfer and spectrum manager leases – by adopting immediate processing procedures (*i.e.*, overnight processing through the Universal Licensing System (ULS)) for transactions that do not raise certain specified potential public interest concerns.⁸ Thus, leasing parties submitting qualifying spectrum leasing transactions will be able to proceed immediately with implementation of their spectrum leases, instead of having to wait 21 days⁹ (10 days if a short-term lease), as required under existing spectrum leasing rules for both *de facto* transfer and spectrum manager leases.¹⁰

5. With respect to both long-term and short-term *de facto* transfer leasing, we adopt immediate approval procedures for certain categories of *de facto* transfer leasing arrangements that do not raise potential public interest concerns relating to eligibility and use, foreign ownership, designated entity/entrepreneur matters, or competition.¹¹ For transactions that involve telecommunications carriers subject to the Commission's Section 10 forbearance authority, the Second Report and Order forbears from the 21-day prior public notice requirements (10 days for short-term *de facto* transfer spectrum leasing).¹² For transactions that do not involve telecommunications carriers (and thus are not subject to forbearance), we permit spectrum leases to proceed under the immediate approval procedures because their applications establishes all of the requisite elements necessary for determining that approval is consistent with the public interest.¹³ The Second Report and Order also adopts similar immediate processing for qualifying spectrum manager lease notifications.¹⁴ Post-approval reconsideration procedures (for *de facto* transfer leases) and post-notification reconsideration procedures (for spectrum manager leases) apply, providing interested parties an opportunity to seek reconsideration, and similarly providing the Wireless Telecommunications Bureau (Bureau) 30 days, and the Commission 40 days, to reconsider whether the spectrum leasing is in the public interest. The Bureau (or Commission) also retains the right to take appropriate action for any false certifications that leasing parties make in their application or notification.¹⁵

6. The Second Report and Order affirms and further clarifies the policy set forth in the *Report and Order* that permits designated entity (DE) and entrepreneur licensees to enter into spectrum manager leases with any entity, but only provided that the lease does not cause the DE or entrepreneur licensee to

(Continued from previous page) _____
309(j)(3) and (4) of the Communications Act. See generally 47 U.S.C. §§ 309(j)(3), (4); 47 C.F.R. § 1.2110; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348 (1994).

⁸ See generally Second Report and Order at paras. 10-50.

⁹ The Commission reserves the right to take longer than 21 days if the spectrum leasing transaction raises potential public interest concerns requiring additional review.

¹⁰ See generally Second Report and Order at paras. 10-50.

¹¹ See *id.* at paras. 15-45.

¹² See *id.* at paras. 15-37.

¹³ See *id.* at paras. 39-41.

¹⁴ See *id.* at paras. 47-50.

¹⁵ See *id.* at paras. 31-32, 39, 43, 49.

lose its eligibility under the applicable Commission policies and rules.¹⁶ DE and entrepreneur licensees must therefore undertake the same kind of determination required when evaluating eligibility for auctions or license transfers prior to certifying that their spectrum leasing arrangement is in compliance with our rules. Because spectrum leasing arrangements entered into by DE and entrepreneur licensees are not subject to the immediate processing procedures, the Commission will have the ability to review, on a case-by-case basis, any leasing certification that it believes gives rise to a question of the licensee's continued eligibility.

7. Also, the Second Report and Order extends spectrum leasing policies to three additional services. Specifically, it permits public safety licensees in the Part 90 Radio Safety Pool to lease spectrum to other public safety entities and to entities that provide communications in support of public safety operations. In addition, it extends the spectrum leasing policies to the Multichannel Video Distribution and Data Service (MVDDS) and Automated Maritime Communications Systems (AMTS) Services in which licensees hold exclusive use rights. It does not, however, extend the spectrum leasing policies to other wireless radio services that involve sharing of the authorizations or to services in which the spectrum leasing policies might undermine policies related to the underlying authorization.¹⁷

8. Furthermore, the Second Report and Order establishes the new regulatory concept of a "private commons" that would be available to individual users or groups of users that do not fit squarely within the current options for spectrum leasing or within traditional end-user models associated with subscriber-based services and network architectures. The private commons option is similar to "public" commons of the kind associated with the current uses and applications of unlicensed devices under Part 15 rules, except that it would involve licensed spectrum in which the licensee (or spectrum lessee) would not necessarily offer services over its own end-to-end physical network of base stations, mobile stations, and other elements; as manager of the commons, the licensee (or lessee) sets the terms and conditions for users, notifies the Commission about the private commons prior to users' operations, and retains direct responsibility for users' compliance with the rules.¹⁸

9. In addition, the Second Report and Order extends immediate approval procedures for certain classes of license assignments and transfers of control. The order adopts the same immediate approval procedures for license assignments and transfer of control transactions that would not raise specified public interest concerns (*i.e.*, those relating to eligibility and use, foreign ownership, designated entity, or competition), consistent with the policies adopted in the order for *de facto* transfer leases.¹⁹ The Second Report and Order also extends the applicable streamlined approval procedures – either the immediate approval or 21-day streamlined approval (or longer if additional review is necessary) – to all wireless radio services regulated by the Bureau, regardless of whether spectrum leasing is permitted.²⁰

10. Finally, in the Second Report and Order we conclude that the information already provided by spectrum leasing parties when they file applications or notifications relating to entering into spectrum

¹⁶ See *id.* at paras. 69-84.

¹⁷ See *id.* at paras. 52-66.

¹⁸ See *id.* at paras. 91-99.

¹⁹ See *id.* at paras. 101-108.

²⁰ See *id.* at paras. 110-111.

leasing arrangements is sufficient for enabling secondary markets the development of efficient markets in spectrum usage rights. Accordingly, we determine that we will not, at this time, require the spectrum leasing parties to provide the Commission with any additional information than that already required under existing rules. We also decline, at this time, to take action to establish the Commission as either a market-maker or exchange.

11. Order on Reconsideration. In the Order on Reconsideration, we address five petitions for reconsideration that we received with regard to the *Report and Order*. These petitions touched on a variety of issues, including the licensee's responsibility to ensure its spectrum lessee's compliance with Commission policies and rules, protections for the licensee or spectrum lessee in the event a spectrum lease or a license is terminated, and the respective responsibilities of licensees and spectrum lessees regarding particular service rules. In the Order on Reconsideration, we provide additional clarification to our spectrum leasing policies and rules.²¹

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

12. Second Report and Order. We received no comments in response to the previous IRFA. We note, however that several commenting parties that represent small entities or rural carriers expressed support for the Commission's efforts to provide additional streamlining of our processing of certain categories of spectrum leasing arrangements and license assignments and transfers of control.

13. For instance, the Rural Telecommunications Group (RTG) supported additional streamlining of Commission processing of certain classes of spectrum leasing arrangements and licensee transfer and assignments. It asserted that such a process would help stimulate secondary market transactions by substantially lowering the cost of such transactions and decreasing the time in which such transactions may be completed.²² Similarly, Blooston Rural Carriers supported the Commission's general proposal, set forth in the *Further Notice*, to remove unnecessary regulatory barriers to the development of secondary markets,²³ and believed that the kinds of rules proposed, and ultimately adopted in the Second Report and Order, would further facilitate broader access to spectrum resources. In addition, Blooston Rural Carriers supported that Commission's decision to forbear from certain categories of spectrum leases and assignments, stating that such forbearance would beneficially affect a significant number of arrangements without undermining the Commission's public interest objectives.²⁴

14. In addition to these general observations, we inquired in the *Further Notice* whether the Commission should alter the *de facto* transfer leasing policies adopted in the *Report and Order* and allow a designated entity or entrepreneur licensee to lease some or all of its spectrum usage rights to any entity, regardless of whether that entity would qualify for the same eligibility status as that of the licensee.²⁵ In particular, the we sought comment on how, if such a policy change were made, the Commission could

²¹ See generally Order on Reconsideration at paras. 116-157.

²² See RTG Petition at 1-4.

²³ See Blooston Rural Carriers Petition at 10-11.

²⁴ See *id.* at 24-25.

²⁵ *Further Notice* at ¶ 323.

ensure continued compliance with our statutory obligations to prevent unjust enrichment.²⁶ We also sought comment on whether to use the new *de facto* control standard, rather than the existing controlling interest standard (including the *Intermountain Microwave* criteria²⁷), when evaluating affiliation and eligibility for designated entity and entrepreneur benefits.²⁸ We specifically asked whether this latter change would be consistent with the statutory objectives of Section 309(j).²⁹

15. Some commenters, including AT&T Wireless, Cingular Wireless (which also is a petitioner), Council Tree, and Salmon PCS, suggested that the Commission should permit designated entity and entrepreneur licensees to enter into spectrum leasing arrangements with any entity, regardless of how that arrangement might affect the licensee's designated entity or entrepreneur eligibility. One of these commenters, Council Tree, further suggested that the Commission should eliminate unjust enrichment obligations and entrepreneur transfer restrictions for licensees owned and controlled by Alaska Native Corporations and Indian tribes. These commenters argued generally that designated entity and entrepreneur licensees should benefit from the same flexibility with regard to entering into spectrum leasing arrangements as any other licensees.³⁰ In addition, while two commenters acknowledged the importance of ensuring the spectrum leasing by designated entity and entrepreneur licensees did not undermine the Commission's designated entity or entrepreneur policies, Blooston Rural Carriers and RTG recommended that if such licensees enter into spectrum leasing arrangements that serve rural areas, they should not be subject to any unjust enrichment obligations or transfer restrictions. They generally contended that such a result would be consistent with the purpose of those policies to promote services in rural communities.³¹

16. The Commission devoted significant consideration to the applicability of its designated entity qualification rules to potential spectrum lessees seeking access to spectrum licensed to designated entities, as well as the applicability of its unjust enrichment policies. Reaching a decision on these issues required a balancing of complex competing considerations. The Commission concluded, however, that its statutory obligations under Section 309(j) of the Communications Act³² and its goals to promote opportunities for designated entities (which includes a significant number of small businesses) would be better served by affirming, but clarifying, its designated entity and unjust enrichment policies adopted in

²⁶ *Id.*

²⁷ See *Intermountain Microwave*, 12 FCC 2d 559 (1963); see also *Report and Order* at ¶¶ 3, 10, 60; *Matter of Amendment of Part 1 of the Commission's rules – Competitive Bidding Procedures, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15324 ¶ 61 (2000) (*Part 1 Fifth Report and Order*).

²⁸ *Further Notice* at ¶ 317.

²⁹ *Id.*

³⁰ See AT&T Wireless Comments at 8-9; Cingular Wireless Comments at ii, 2-4, 6-8; Cingular Wireless Petition at 2-4; Council Tree *Ex Parte* Comments at 3, 14-17; Salmon PCS Comments at 8-11.

³¹ See Blooston Rural Carriers Comments at 3-5; RTG Comments at 5-7.

³² See 47 U.S.C. § 309(j).

the *Report and Order* in the context of spectrum leases involving both spectrum manager leasing arrangements and long-term *de facto* transfer leasing arrangements.³³

17. Order on Reconsideration. Five parties petitioned the Commission seeking revision or clarification of the *Report and Order* on several particular issues pertaining to the spectrum leasing policies that were adopted. These included Cingular Wireless' and NTCA's petitions for clarification of the licensee's responsibility for ensuring that spectrum lessees comply with Commission policies and rules,³⁴ Verizon Wireless' petition for Cingular Wireless' and Verizon Wireless' petitions for clarification of the licensee's ability to terminate a spectrum lease for non-compliance by the lessee,³⁵ Blooston Rural Carriers' petition for clarification of Commission policies regarding the licensee's responsibility for meeting application construction requirements when entering into spectrum leasing arrangements,³⁶ and Cingular Wireless's petition for clarification with respect to the licensee's responsibility for the cost-sharing obligations associated with relocation of incumbent microwave licensees in broadband PCS spectrum.³⁷ Four parties, requested additional procedural protections for licensees and spectrum lessees. Specifically, Cingular Wireless and Verizon Wireless sought additional protections for licensees in the event the Commission sought to terminate a spectrum lease,³⁸ while Blooston Rural Carriers, Cingular Wireless, and NTCA requested additional procedural protections for spectrum lessees if the license was terminated, either as a result of the licensee's bankruptcy or for some other unanticipated reason.³⁹ In the Order on Reconsideration, the Commission generally affirmed, and further clarified, the spectrum leasing policies adopted in the *Report and Order* with regard to these issues.⁴⁰ None of these petitioners noted that revisions or clarifications should be made in order to better accommodate the needs of small businesses.

18. In addition, as noted above, Cingular Wireless petitioned the Commission, requesting that it permit designated entity and entrepreneur licensees to enter into spectrum leasing arrangements with any entity, regardless of how that arrangement might affect the licensee's designated entity or entrepreneur eligibility. Because this issue was addressed in the Second Report and Order, it will not be discussed again here.

³³ See Second Report and Order at paras. 67-82.

³⁴ Blooston Rural Carriers Petition at 2-4; 9-11; Cingular Wireless Petition at 6-8; NTCA Petition at 2-3.

³⁵ Verizon Petition at 1-3.

³⁶ Blooston Rural Carriers Petition at 7-9.

³⁷ Cingular Wireless Petition at 9-10.

³⁸ *Id.* at 8-9 (seeking additional protections for licensees in the context of spectrum manager leases); Verizon Wireless Petition at 2-3 (seeking additional protections for spectrum lessees in the context of *de facto* transfer leases).

³⁹ Blooston Rural Carriers Petition at 4-7; Cingular Wireless Petition at 8-9; NTCA Petition at 3-4.

⁴⁰ See generally Order on Reconsideration at paras. 69-82.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

19. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.⁴¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴³ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁴⁴

20. In the following paragraphs, we further describe and estimate the number of small entity licensees that may be affected by the rules we adopt in the Second Report and Order. Since this rulemaking proceeding applies to multiple services, we will analyze the number of small entities affected on a service-by-service basis. Because we have adopted streamlined processing procedures for all license assignment and transfer of control applications involving Wireless Radio Services authorizations regulated by the Bureau, we describe all of the services regulated by the Bureau.

21. As adopted, the Second Report and Order will further streamline the processing of certain spectrum leasing arrangements and license assignments and transfers of control, as well as create new opportunities and obligations for three additional Wireless Radio Services licensees to enter into spectrum leasing arrangements with third parties. When identifying small entities that could be affected by our new rules, we provide information describing auctions results, including the number of small entities that are winning bidders. We note, however, that the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that applicants provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated.⁴⁵

22. **Cellular Licensees.** The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications."⁴⁶ Under that SBA

⁴¹ 5 U.S.C. § 604(a)(3).

⁴² 5 U.S.C. § 601(6).

⁴³ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁴⁴ 15 U.S.C. § 632.

⁴⁵ Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, we requested commenters to estimate the number of small entities that might have been affected by any rule changes resulting from the *Further Notice*.

⁴⁶ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212.

category, a business is small if it has 1,500 or fewer employees.⁴⁷ According to the Bureau of the Census, only twelve firms out of a total of 977 cellular and other wireless telecommunications firms that operated for the entire year in 1997 had 1,000 or more employees.⁴⁸ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers are small businesses under the SBA's definition.

23. 220 MHz Radio Service – Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.⁴⁹ According to the Census Bureau data for 1997, only twelve firms out of a total of 977 such firms that operated for the entire year in 1997, had 1,000 or more employees.⁵⁰ If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

24. 220 MHz Radio Service – Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵¹ This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁵² A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.⁵³ The SBA has approved these small size standards.⁵⁴ Auctions of Phase II

⁴⁷ *Id.*

⁴⁸ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (October 2000).

⁴⁹ 13 C.F.R. § 121.201; NAICS code 517212.

⁵⁰ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (October 2000).

⁵¹ Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997).

⁵² *Id.* at 11068 ¶ 291.

⁵³ *Id.*

⁵⁴ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

licenses commenced on September 15, 1998, and closed on October 22, 1998.⁵⁵ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.⁵⁶ Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁵⁷ A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.⁵⁸

25. Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.⁵⁹ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁶⁰ A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁶¹ Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁶² The SBA has approved these small size standards.⁶³ An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.⁶⁴ A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.⁶⁵ Seventeen winning

⁵⁵ See generally "220 MHz Service Auction Closes," *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

⁵⁶ See "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

⁵⁷ See "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

⁵⁸ See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

⁵⁹ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

⁶⁰ *Id.* at 1087-88 ¶ 172.

⁶¹ *Id.*

⁶² *Id.* at 1088 ¶ 173.

⁶³ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

⁶⁴ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

⁶⁵ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.⁶⁶

26. **Upper 700 MHz Band Licenses.** The Commission released a *Report and Order*, authorizing service in the upper 700 MHz band.⁶⁷ This auction, previously scheduled for January 13, 2003, has been postponed.⁶⁸

27. **Paging.** In the *Paging Second Report and Order*, we adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁶⁹ A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁷⁰ The SBA has approved this definition.⁷¹ An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.⁷² Fifty-seven companies claiming small business status won 440 licenses.⁷³ An auction of Metropolitan Economic Area (MEA) and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁷⁴ 132 companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁷⁵ Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 608 private and common carriers reported that they were engaged in the provision of either paging or “other

⁶⁶ *Id.*

⁶⁷ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

⁶⁸ See “Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled,” *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

⁶⁹ Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, *Second Report and Order*, 12 FCC Rcd 2732, 2811-2812 ¶¶ 178-181 (*Paging Second Report and Order*); see also Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 10030, 10085-10088 ¶¶ 98-107 (1999).

⁷⁰ *Paging Second Report and Order*, 12 FCC Rcd at 2811 ¶ 179.

⁷¹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

⁷² See “929 and 931 MHz Paging Auction Closes,” *Public Notice*, 15 FCC Rcd 4858 (WTB 2000).

⁷³ See *id.*

⁷⁴ See “Lower and Upper Paging Band Auction Closes,” *Public Notice*, 16 FCC Rcd 21821 (WTB 2002).

⁷⁵ See “Lower and Upper Paging Bands Auction Closes,” *Public Notice*, 18 FCC Rcd 11154 (WTB 2003).

mobile” services.⁷⁶ Of these, we estimate that 589 are small, under the SBA-approved small business size standard.⁷⁷ We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

28. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁷⁸ For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁷⁹ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.⁸⁰ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁸¹ On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.⁸²

29. Narrowband PCS. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.⁸³ Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.⁸⁴ To ensure meaningful participation by small business entities in

⁷⁶ See *Trends in Telephone Service*, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers that are Small Businesses) (May 2002).

⁷⁷ 13 C.F.R. § 121.201, NAICS code 517211.

⁷⁸ See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

⁷⁹ See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

⁸⁰ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

⁸¹ FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. January 14, 1997).

⁸² See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

⁸³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 ¶ 46 (1994).

⁸⁴ See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); “Announcing the High (continued....)”

future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.⁸⁵ A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.⁸⁶ A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.⁸⁷ The SBA has approved these small business size standards.⁸⁸ A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.⁸⁹ Three of these claimed status as a small or very small entity and won 311 licenses.

30. **Specialized Mobile Radio (SMR).** The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.⁹⁰ The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.⁹¹ The SBA has approved these small business size standards for the 900 MHz Service.⁹² The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.⁹³

(Continued from previous page)

Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787," *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

⁸⁵ Amendment of the Commission's Rules to Establish New Personal Communications Services, *Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

⁸⁹ See "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

⁹⁰ 47 C.F.R. § 90.814(b)(1).

⁹¹ *Id.*

⁹² See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

⁹³ See "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.⁹⁴

31. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

32. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

33. **Private Land Mobile Radio (PLMR).** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.⁹⁵ The commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.⁹⁶

34. **Fixed Microwave Services.** Fixed microwave services include common carrier,⁹⁷ private-operational fixed,⁹⁸ and broadcast auxiliary radio services.⁹⁹ Currently, there are approximately 22,015

⁹⁴ See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

⁹⁵ See 13 C.F.R. § 121.201, NAICS code 517212.

⁹⁶ See generally 13 C.F.R. § 121.201.

⁹⁷ 47 C.F.R. §§ 101 *et seq.* (formerly, part 21 of the Commission's Rules).

⁹⁸ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See generally 47 C.F.R. parts 80 and 90. Stations in this service are called operational-fixed (continued....)

common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to "Cellular and Other Wireless Telecommunications" companies – that is, an entity with no more than 1,500 persons.¹⁰⁰ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

35. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.¹⁰¹ The SBA has approved these definitions.¹⁰² The FCC auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670-1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

36. 39 GHz Service. The Commission defines "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁰³ "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁰⁴ The SBA has approved these

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to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁹⁹ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹⁰⁰ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁰¹ Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

¹⁰² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

¹⁰³ See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Band, *Report and Order*, 12 FCC Rcd 18600 (1997).

¹⁰⁴ *Id.*

definitions.¹⁰⁵ The auction of the 2,173 39 GHz licenses began on April 12, 2000, and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

37. Local Multipoint Distribution Service. An auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined “small entity” for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁰⁶ An additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁰⁷ These regulations defining “small entity” in the context of LMDS auctions have been approved by the SBA.¹⁰⁸ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning bidders that won 119 licenses.

38. 218-219 MHz Service. The first auction of 218-219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).¹⁰⁹ Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹¹⁰ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.¹¹¹ A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not

¹⁰⁵ See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002.

¹⁰⁶ See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689-90 ¶ 348 (1997).

¹⁰⁷ *Id.*

¹⁰⁸ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

¹⁰⁹ See “Interactive Video and Data Service (IVDS) Applications Accepted for Filing,” *Public Notice*, 9 FCC Rcd 6227 (1994).

¹¹⁰ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

¹¹¹ Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

exceeding \$3 million for the preceding three years.¹¹² The SBA has approved of these definitions.¹¹³ At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this FRFA that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

39. Location and Monitoring Service (LMS). Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.¹¹⁴ A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million.¹¹⁵ These definitions have been approved by the SBA.¹¹⁶ An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

40. Rural Radiotelephone Service. We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.¹¹⁷ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

41. Air-Ground Radiotelephone Service. We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.¹¹⁸ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

42. Offshore Radiotelephone Service. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states

¹¹² *Id.*

¹¹³ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

¹¹⁴ Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15192 ¶ 20 (1998); see also 47 C.F.R. § 90.1103

¹¹⁵ Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd at 15192 ¶ 20; see also 47 C.F.R. § 90.1103.

¹¹⁶ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

¹¹⁷ 13 C.F.R. § 121.201, NAICS code 517212.

¹¹⁸ *Id.*

bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.¹¹⁹ The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

43. **Multiple Address Systems (MAS).** Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines “small entity” for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years.¹²⁰ “Very small business” is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years.¹²¹ The SBA has approved of these definitions.¹²² The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission’s licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.¹²³ Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

44. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the “Cellular and Other Wireless Telecommunications” definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.¹²⁴ The Commission’s licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

45. **Incumbent 24 GHz Licensees.** The rules that we adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the

¹¹⁹ *Id.*

¹²⁰ See Amendment of the Commission’s Rules Regarding Multiple Address Systems, *Report and Order*, 15 FCC Rcd 11956, 12008 ¶ 123 (2000).

¹²¹ *Id.*

¹²² See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

¹²³ See “Multiple Address Systems Spectrum Auction Closes,” *Public Notice*, 16 FCC Rcd 21011 (2001).

¹²⁴ See 13 C.F.R. § 121.201, NAICS code 517212.

definition under the SBA rules for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any entity employing no more than 1,500 persons.¹²⁵ We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹²⁶ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

46. **Future 24 GHz Licensees.** With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.¹²⁷ "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹²⁸ The SBA has approved these definitions.¹²⁹ The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

47. **700 MHz Guard Band Licenses.** In the *700 MHz Guard Band Order*, we adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹³⁰ A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹³¹ Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹³² SBA approval of these definitions is not

¹²⁵ See *id.* According to Census Bureau data for 1997, in this category, there were a total of 977 firms that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (October 2000). Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. *Id.* The census data do not provide a more precise estimate of the number of firms that have 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

¹²⁶ Teligent acquired the Digital Electronic Message Service (DEMS) licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

¹²⁷ Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967 ¶ 77 (2000) (*24 GHz Report and Order*); see also 47 C.F.R. § 101.538(a)(2).

¹²⁸ *24 GHz Report and Order*, 15 FCC Rcd at 16967 ¶ 77; see also 47 C.F.R. § 101.538(a)(1).

¹²⁹ See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

¹³⁰ See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

¹³¹ *Id.* at 5343 ¶ 108.

¹³² *Id.*

requires.¹³³ An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, can closed on September 21, 2000.¹³⁴ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.¹³⁵

48. Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly Instructional Television Fixed Service). Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as “wireless cable,” transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).¹³⁶ In its recently issued *BRS/EBS Report and Order* in WT Docket No. 03-66, the Commission comprehensively reviewed our policies and rules relating to the ITFS and MDS services, and replacing the Multipoint Distribution Service (MDS) with the Broadband Radio Service and Instructional Television Fixed Service (ITFS) with the Educational Broadband Service.¹³⁷ In connection with the 1996 MDS auction, the Commission defined “small business” as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.¹³⁸ The SBA has approved of this standard.¹³⁹ The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).¹⁴⁰ Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate

¹³³ *Id.* At 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

¹³⁴ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

¹³⁵ See “700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

¹³⁶ Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding, MM Docket No. 94-131 and PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589, 9593 ¶ 7 (1995) (*MDS Auction R&O*).

¹³⁷ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 03-145 (rel. July 29, 2004) (*BRS/EBS Report and Order*). As we noted in the *Further Notice*, there are unique policies associated with ITFS licensees’ educational purposes, and the services have already developed their own approach to excess capacity leasing. See *Further Notice* at ¶¶ 307-08.

¹³⁸ 47 C.F.R. § 21.961(b)(1).

¹³⁹ See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of \$40 million size standard for MDS auction).

¹⁴⁰ Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See *MDS Auction R&O*, 10 FCC Rcd at 9608 ¶ 34.

that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.¹⁴¹

49. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,¹⁴² which includes all such companies generating \$12.5 million or less in annual receipts.¹⁴³ According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.¹⁴⁴ Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million.¹⁴⁵ Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies in the Second Report and Order.

50. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities.¹⁴⁶ There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

51. **Multichannel Video Distribution and Data Service.** MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. Licenses in this service were auctioned in January 2004, with 10 winning bidders for 192 licenses. Eight of these 10 winning bidders claimed small businesses status for 144 of these licenses.¹⁴⁷

52. **Aviation and Marine Services.** Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular

¹⁴¹ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$12.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

¹⁴² 13 C.F.R. § 121.201, NAICS code 517510.

¹⁴³ *Id.*

¹⁴⁴ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4 (issued October 2000).

¹⁴⁵ *Id.*

¹⁴⁶ In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

¹⁴⁷ "Multichannel Video Distribution and Data Service Auction Closes," *Public Notice*, DA 04-215 (Feb. 2, 2004).

and Other Telecommunications,” which is 1,500 or fewer employees.¹⁴⁸ Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.¹⁴⁹ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

53. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.¹⁵⁰ There are a total of approximately 127,540 licensees in these services. Governmental entities¹⁵¹ as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.¹⁵²

¹⁴⁸ 13 CFR § 121.201, NAICS code 517212 (2002).

¹⁴⁹ Amendment of the Commission’s Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

¹⁵⁰ With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission’s Rules, 47 C.F.R. §§ 90.15-90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15-90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33-90.55.

¹⁵¹ 47 C.F.R. § 1.1162.

¹⁵² 5 U.S.C. § 601(5).

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

54. The projected reporting, recordkeeping, and other compliance requirements resulting from the Second Report and Order and the Order on Reconsideration will apply to all entities in the same manner, consistent with the approach we adopted in the *Report and Order*.¹⁵³ We believe that applying the same rules equally to all entities helps to promote fairness in the spectrum leasing process, as well in the license assignment and transfer of control process, and we do not believe that the costs and/or administrative burdens associated with the rules, as revised for certain classes of spectrum leasing and license transfer and assignment transactions will disproportionately or unduly burden small entities. The revisions we adopt today should benefit small entities by giving them more information, more flexibility, and more options for gaining access to valuable wireless spectrum.

55. Immediate processing procedures for qualifying transactions. One of our goals is to further streamline Commission processing of certain spectrum leasing arrangements and of license assignment and transfer of control applications in order to minimize administrative delays, reduce transaction costs, encourage more efficient use of spectrum, and otherwise facilitate the movement of spectrum toward new and higher valued uses.¹⁵⁴ Additional streamlining, including adoption of immediate processing procedures for certain categories of these transactions that do not raise specified potential public interest concerns, helps us to achieve these goals while at the same time meeting our statutory obligations, under Sections 308, 309, and 310(d), to review license assignments and transfers of control to ensure that they are consistent with the public interest.¹⁵⁵

56. Under the rules adopted in the Second Report and Order, parties seeking to benefit from the Commission's immediate processing procedures for spectrum leasing arrangements and for license transfers and assignments must submit filings with the Commission using our Universal Licensing System (ULS), just as such filings were required under the procedures adopted in the underlying *Report and Order*.¹⁵⁶ In order to qualify for such immediate processing under these new procedures, we require parties to make certain additional certifications.¹⁵⁷ Otherwise, the reporting requirements are not substantially different than those already required when parties seek to enter into spectrum leasing arrangements, as already established under the underlying *Report and Order*. If parties qualify, they benefit by having their arrangements processed immediately, and thus have less delay in gaining access to the spectrum by implementing the transactions.

57. Extending spectrum leasing policies to additional spectrum-based services. We extend the spectrum leasing policies to permit public safety licensees in the Part 90 Radio Safety Pool to lease spectrum to other public safety entities and to entities that provide communications in support of public safety operations. We also extend the spectrum leasing policies to two other services in which licensees hold exclusive use rights, the Multichannel Video Distribution and Data Services (MVDDS) and the

¹⁵³ See generally *Report and Order*, Appendix C (Final Regulatory Flexibility Analysis justifying adoption of the same filing requirements on all entities, regardless of size).

¹⁵⁴ See Second Report and Order at para. 10.

¹⁵⁵ See Second Report and Order at paras. 10-50.

¹⁵⁶ See *Report and Order* at paras. 123-125, 150-154, 181.

¹⁵⁷ See Second Report and Order at paras. 15-28, 39-41, 47-49.

Automated Maritime Communications Systems (AMTS) Services. The reporting requirements for these services is no different from the reporting requirements already required for all other services to which our spectrum leasing policies apply.

58. Adoption of the “private commons” option. In the Second Report and Order, we adopt the private commons option under which licensees and spectrum lessees may make licensed spectrum available to individuals or groups of users employing certain advanced wireless technologies in a manner similar to that by which unlicensed users gain access to spectrum, and to do so without the need for entering into individual spectrum leasing arrangements. While we do require that licensees or spectrum lessees that establish a private commons to notify the Commission, we do not require the same amount of information as required for spectrum leasing arrangements.

59. Immediate approval procedures for certain categories of license assignment and transfer of control applications. We adopt streamlined application processes for license assignments and transfers of control involving Wireless Radio similar to those we have adopted for *de facto* transfer spectrum leasing arrangements. As with *de facto* transfer leasing arrangements, in order to qualify for such immediate processing under these new procedures, we require parties to make certain additional certifications.¹⁵⁸ Otherwise, the reporting requirements are not substantially different than those already required when parties seek to enter into spectrum leasing arrangements.

60. Extending the streamlined processing policies relating to license assignments and transfers of control to additional wireless services. We also determine to apply the streamlined processing procedures adopted in the *Report and Order* for license assignments and transfer of control applications, as well as the immediate approval processing for qualifying transactions as adopted in this Second Report and Order, to all of the Wireless Radio Services authorizations regulated by the Bureau. Thus, while new services now may benefit from more streamlined processing of license transfer and assignment applications, the reporting requirements do not differ from those already required for licensees and assignees/transferees under the policies established in the *Report and Order*.

61. Order on Reconsideration. In the Order on Reconsideration, we generally affirm the spectrum leasing policies and rules established in the underlying *Report and Order*, and do not impose any additional reporting requirements on licensees and spectrum lessees.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

62. The RFA requires an agency to describe any significant alternatives that it considered in reaching its final decision, which may include the following four alternatives, (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”¹⁵⁹

¹⁵⁸ See Second Report and Order at paras. 101-103.

¹⁵⁹ 5 U.S.C. §§ 603(c)(1)-(4).

63. Immediate processing of certain categories *de facto* transfer leasing arrangements. See Second Report and Order, paras. 11-45. Consistent with the broad support by commenters,¹⁶⁰ we generally adopt the forbearance proposal set forth in the *Further Notice* with a few modifications. We do not anticipate any adverse impact on small entities as a result of our decision to adopt immediate processing of certain categories of spectrum leasing arrangements, both *de facto* transfer leases and spectrum manager leases.

64. In particular, we permit all *de facto* transfer leases involving telecommunications services that are subject to the Commission's forbearance authority to proceed pursuant to the application and immediate grant procedures set forth in the Second Report and Order. See Report and Order at paras. 11-36. In particular, we require that, in the spectrum leasing application submitted to the Commission, the spectrum lessee must make certain additional certifications (e.g., those in which the spectrum leasing arrangement involves license authorizations that permit interconnected mobile voice and/or data services) in order to qualify for immediate approval processing (in lieu of the general 21-day processing procedures under the rules adopted in the *Report and Order*).¹⁶¹ Consistent with the general proposal set forth in the *Further Notice*, we will no longer require prior public notice and individualized Commission review of these leases that meet the requirements specified above. Specifically, if the spectrum leasing parties file their *de facto* transfer lease application in the Universal Licensing System (ULS), and the application established the requisite elements explained above, and are otherwise complete, the Bureau will process the application and provide immediate approval through ULS processing, reflected on the next business day after filing the application. We believe that forbearing from public notice and additional Commission review of the qualifying *de facto* transfer spectrum leasing arrangements that do not raise potential public interest concerns, is consistent with the public interest and will benefit all entities, including small entities, by allowing them gain immediate access to spectrum to implement their business plans with reduced regulatory delay and transaction costs.

65. We also permit *de facto* transfer leases that involve spectrum leasing arrangements not subject to forbearance to proceed under the same application/immediate approval policies as adopted above for *de facto* transfer leases subject to forbearance, so long as the leasing parties can establish that the arrangements are consistent with the public interest because they establish the same specified qualifications. See Report and Order at paras. 37-40. As above, permitting entities that seek to enter into these leasing arrangements that qualify for immediate approval serves to benefit all such entities, including small entities.

66. In addition, we revise our rules for processing short-term *de facto* transfer leases so that they may be approved pursuant to the immediate approval procedures. Because such short-term *de facto* transfer leasing arrangements, under the policies applicable to them, would qualify for immediate approval processing because they do not potential public interest concerns that merit prior public notice or additional review, we no longer will require such applications to be processed pursuant to our Special Temporary Authority (STA) 10-day review procedures. These immediate processing procedures benefit all entities entering into short-term *de facto* transfer leases, including small entities.

¹⁶⁰ All parties commenting on the forbearance proposal supported the Commission's general approach. See, e.g., Blooston Rural Carriers Comments at 11-12; RTG Comments at 2-5; SBC Comments at 7-10; PCIA Comments at 5; Spectrum Market Comments at 4; Cantor Fitzgerald Comments at 2; CTIA Comments at 2-4.

¹⁶¹ See Second Report and Order at paras. 15-28.

67. Immediate processing of certain categories of spectrum manager leasing arrangements. See Second Report and Order at paras. 46-50. We also revise our policies for spectrum manager lease notifications to be consistent with the policies for *de facto* transfer leases as described above. Accordingly, where parties seek to enter into spectrum manager leases that do not raise specified potential public interest concerns (e.g., potential competition concerns), we will permit them to commence operations under those leasing arrangements once they have notified the Commission of the lease, and have made the necessary certifications to qualify for immediate processing. If the spectrum manager lease satisfies the qualifying elements, we do not believe it necessary to review these notifications in advance of operations. The immediate processing procedures adopted for these qualifying spectrum manager leases will benefit all entities that qualify, including small entities, and will facilitate more rapid and efficient use of wireless radio spectrum.

68. Extending spectrum leasing policies to additional spectrum-based services. See Second Report and Order at paras. 51-66. We extend the spectrum leasing policies to permit public safety licensees in the Part 90 Radio Safety Pool to lease spectrum to other public safety entities and to entities that provide communications in support of public safety operations. We also extend the spectrum leasing policies to two other services in which licensees hold exclusive use rights, the Multichannel Video Distribution and Data Services (MVDDS) and the Automated Maritime Communications Systems (AMTS) Services. For these public safety licensees, we facilitate more efficient and effective use of public safety communications, foster interoperability, and further our various homeland security initiatives. For MVDDS and AMTS, we permit the same benefits of spectrum leasing to be extended to these services as well. Extension of our spectrum leasing policies in these services will benefit all entities in these services, both small and large.

69. Clarification of the spectrum leasing policies applicable to designated entity and entrepreneur licensees. See Second Report and Order at paras. 67-82. We affirm and clarify the rules established in the *Report and Order* for spectrum leasing by designated entity and entrepreneur licensees. On so doing, we decline requests that we choose an alternative providing such licensees with the right to lease spectrum to any entity, without regard to our eligibility rules for designated entities and entrepreneurs. Although a few commenters suggest that we adopt the alternative policy, we believe that adopting such a change would contravene the requirements and objectives of Section 309(j) of the Act.¹⁶² Under Section 309(j), Congress sought to promote diversity among service providers, as well as the rapid deployment of new technologies for the benefit of, among others, rural customers. If we allow designated entities and entrepreneurs to enter into spectrum manager leasing arrangements without considering whether the spectrum lessee acquires an interest in the licensee, we run the risk that entities that do not qualify for such incentives in the primary market will be unjustly enriched.

70. We also reject recommendations that we allow licensees to maintain their designated entity and/or entrepreneur eligibility without the imposition of unjust enrichment payment obligations and transfer restrictions in situations where the spectrum lessee will use the lease to serve rural areas.¹⁶³ The Commission is not required to ensure both the rapid deployment of service to telecommunications service to rural areas and the participation of rural telephone companies. Section 309(j) only requires that the Commission seek to promote the objective that service be developed and rapidly deployed to rural customers and only ensure that rural telephone companies are given the opportunity to participate. The

¹⁶² 47 U.S.C. § 309 (j)(4).

¹⁶³ Blooston Rural Carriers Comments at 3-5.

Commission has provided small businesses with bidding credits and entrepreneurs with license set-asides in order for them to have the opportunity to participate in the provision of spectrum based services. The Commission has determined that telephone companies providing service in rural areas do not have per se the same difficulty accessing capital as other groups and allowing unrestricted ability to lease to non-eligible entities planning to serve rural areas would be allowing the larger entities to benefit indirectly from small businesses.

71. Clarification that "dynamic" spectrum leasing arrangements are permitted. See Second Report and Order at paras. 85-88. We clarify that our spectrum leasing policies and rules permit spectrum leasing parties to enter into a variety of dynamic forms of spectrum leasing arrangements that take advantage of the capabilities associated with advanced technologies. Thus, spectrum leasing parties may enter into spectrum leasing arrangements in which licensees and spectrum lessees share use of the same spectrum, on a non-exclusive basis, during the term of the spectrum lease. For example, a licensee and spectrum lessee may enter into a spectrum manager or *de facto* transfer lease in which use of the same spectrum is shared with each other by employing opportunistic devices. In another variation, a licensee could enter into a spectrum manager lease with one party that has access to the spectrum on a priority basis, while also leasing use of the same spectrum to another party on a lower-priority basis, with the requirement that the lower-priority spectrum lessee employ opportunistic technology to avoid interfering with the priority lessee. Both small and large entities will benefit from these dynamic leasing arrangements.

72. Adoption of the "private commons" option. See Second Report and Order at paras. 90-99. We adopt the private commons option in the Second Report and Order to facilitate the use of advanced technologies and thus better promote access to and the efficient use of spectrum. The private commons option will allow licensees or spectrum lessees to make spectrum available to individual users or groups of users that may not fit squarely within the current options for spectrum leasing or within the traditional models associated with subscriber-based services and network architectures. The private commons would be similar to "public" commons of the kind associated with the current uses and applications of unlicensed devices under Part 15 rules, except that it would involve licensed spectrum in which the licensee (or lessee) would not necessarily offer services over its own end-to-end physical network of base stations, mobile stations, and other elements. As manager of the commons, the licensee (or lessee) would set terms and conditions for users, retain direct responsibility for users' compliance with the rules, and notify the Commission about the private commons prior to users' operations. The private commons option will help small (and large) entities by allowing for more flexible uses of licensed spectrum to incorporate new means of implementing advanced technologies and provides an important complement to the spectrum leasing policies we have already adopted to facilitate spectrum access.

73. Immediate approval procedures for certain categories of license assignment and transfer of control applications. See Second Report and Order at paras. 98-104. We adopt streamlined application processes for license assignments and transfers of control involving Wireless Radio similar to those we have adopted for *de facto* transfer spectrum leasing arrangements. This policy will help all entities, including small entities, by reducing transaction costs, minimizing administrative delay, and encouraging more efficient use of spectrum.

74. Extending the streamlined processing policies relating to license assignments and transfers of control to additional wireless services. See Second Report and Order at paras. 109-110. We will apply the streamlined processing procedures adopted in the *Report and Order* for license assignments and transfer of control applications, as well as the immediate approval processing for qualifying transactions as adopted in this Second Report and Order, to all of the Wireless Radio Services authorizations regulated by the Bureau. This decision enables all license transfers and assignments

involving these Wireless Radio Services, not just those Wireless Radio Services for which spectrum leasing is permitted, to benefit from streamlined processing or immediate processing, whichever is applicable. This ensures that an addition set of Wireless Radio Services licensees, both small entities and large ones, may now take advantage of these procedures that minimize administrative delays and reduce transaction costs.

75. Clarification of spectrum leasing policies and rules in the Order on Reconsideration. See Order on Reconsideration at paras. 116-157. The Order on Reconsideration addresses petitions that seek clarification on a variety of issues, including: (1) the licensee's responsibility to ensure its spectrum lessee's compliance with Commission policies and rules; (2) protections for the licensee or spectrum lessee in the event of a spectrum lease or a license is terminated; and (3) the respective responsibilities of licensees and spectrum lessees regarding particular service rules. As a general matter, the Order on Reconsideration affirms and further clarifies the policies adopted in the underlying *Report and Order*. We do not anticipate any adverse impact on small entities as a result of this action. Our approach here should benefit small entities by reducing regulatory uncertainty and further enhancing the development of a more robust secondary markets and access to spectrum.

Report to Congress: The Commission will send a copy of the Second Report and Order and the Order on Reconsideration, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.¹⁶⁴ In addition, the Commission will send a copy of the Second Report and Order and the Order on Reconsideration, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Second Report and Order, Order on Reconsideration, and the FRFA (or summaries thereof) will also be published in the Federal Register.¹⁶⁵

IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Report and Order and the Order on Reconsideration, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

¹⁶⁴ See 5 U.S.C. § 801(a)(1)(A).

¹⁶⁵ See 5 U.S.C. § 604(b).

APPENDIX E – INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Second Further Notice of Proposed Rulemaking (Second Further Notice).² Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided in paragraph 167 of the item. The Commission will send a copy of the Second Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³ In addition, the Second Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.⁴

A. Need for, and Objectives of, the Proposed Rules

2. In the Second Report and Order, we adopt changes that further facilitate the leasing of spectrum usage rights and enhancing the functioning of the secondary spectrum marketplace generally. However, we believe that there may be additional measures that we might take to improve efficiency and promote access to a secondary spectrum market in order to ensure the greatest benefit to spectrum users and consumers. Thus, in the Second Further Notice, we seek comment on evaluating additional policies that could facilitate the development of advanced technologies through secondary market arrangements, such as spectrum leasing and private commons, and obtaining further clarification regarding the private commons options. We discuss the potential impact of these on small entities in the paragraphs that follow.

B. Legal Basis

3. The potential actions on which comment is sought in this Second Further Notice would be authorized under Sections 1, 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See Second Further Notice, Section VI, *supra*.

³ See 5 U.S.C. § 603(a).

⁴ See *id.*

⁵ 5 U.S.C. § 604(a)(3).

⁶ 5 U.S.C. § 601(6).

the term "small business concern" under the Small Business Act.⁷ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁸

5. In the following paragraphs, we further describe and estimate the number of small entity licensees that may be affected by the rules we propose in the Second Further Notice. Since this rulemaking proceeding applies to multiple services, we will analyze the number of small entities affected on a service-by-service basis.

6. As adopted, the Second Report and Order will create new opportunities and obligations for Wireless Radio Service s licensees and other entities that may lease spectrum usage rights from these licensees. When identifying small entities that could be affected by our new rules, we provide information describing auctions results, including the number of small entities that aware winning bidders. We not, however, that the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that applicants provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, we requested commenters to estimate the number of small entities that may be affected by any rule changes resulting from this Second Further Notice.

7. In the Second Further Notice, we seek comment on possible further refinements to our existing policies and rules for spectrum leasing arrangements and for private commons arrangements. If any revisions were adopted, such revisions potentially could affect small entity licensees holding licenses in the Wireless Radio Services identified below.

8. **Cellular Licensees.** The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications."⁹ Under that SBA category, a business is small if it has 1,500 or fewer employees.¹⁰ According to the Bureau of the Census, only twelve firms out of a total of 977 cellular and other wireless telecommunications firms that operated for the entire year in 1997 had 1,000 or more employees.¹¹ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers are small businesses under the SBA's definition.

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁸ 15 U.S.C. § 632.

⁹ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212.

¹⁰ *Id.*

¹¹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (October 2000).